

LEGISLATURE OF NEBRASKA
NINETY-SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 464

Introduced by Wickersham, 49; Smith, 48

Read first time January 10, 2001

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend section
2 77-5014, Reissue Revised Statutes of Nebraska, and
3 sections 77-1311, 77-5001, 77-5003, 77-5005, 77-5015, and
4 77-5016, Revised Statutes Supplement, 2000; to change and
5 eliminate duties concerning plans of assessment; to
6 provide for progress reports; to change membership of and
7 hearing procedures before the Tax Equalization and Review
8 Commission; to create a penalty; to repeal the original
9 sections; to outright repeal section 77-5012, Revised
10 Statutes Supplement, 2000; and to declare an emergency.
11 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-1311, Revised Statutes Supplement,
2 2000, is amended to read:

3 77-1311. The county assessor shall have general
4 supervision over and direction of the assessment of all property in
5 his or her county. In addition to the other duties provided by
6 law, the county assessor shall:

7 (1) Annually revise the real property assessment for the
8 correction of errors and, when properties have been assessed as
9 entities and afterward part or parts transferred to other parties,
10 set off and apportion to each its just and equitable portion of the
11 valuation;

12 (2) Obey all rules and regulations made under Chapter 77
13 and the instructions and orders sent out by the Property Tax
14 Administrator and the Tax Equalization and Review Commission;

15 (3) Examine the records in the office of the register of
16 deeds and county clerk for the purpose of ascertaining whether
17 mortgages on real property and security interests on personal
18 property, producing mineral leases, title notes, contracts, and
19 bills of sale, intended to operate as a lien in the county, have
20 been fully and correctly listed and add to the assessment roll any
21 which have been omitted, belonging to residents of his or her
22 county, and not otherwise assessed, upon notice to the owner
23 thereof or his or her agents;

24 (4) Examine the records in the office of the county judge
25 and ascertain whether the property belonging to minors, persons
26 with mental retardation or a mental disorder, and estates of
27 deceased persons has been fully and correctly listed and add to or
28 change any such assessments so that the same shall be fully

1 assessed;

2 (5) Examine the records in the office of the clerk of the
3 district court to ascertain whether any judgments or liens thereon
4 filed, belonging to residents of his or her county and not
5 otherwise assessed, have been omitted from the assessment rolls
6 and, in case of any such omission, add the same to the assessment
7 roll after notice to the owner;

8 (6) Make up the assessment roll as provided in section
9 77-1303; ~~and~~

10 (7) Provide access to the public to property record cards
11 and allow facsimiles to be reproduced at cost to the requesting
12 individual; and

13 (8) Annually submit a plan of assessment to the county
14 board of equalization and the Department of Property Assessment and
15 Taxation on or before September 1. The plan shall be derived from
16 a progress report developed by the department and presented to the
17 county assessor on or before July 31. The progress report is to be
18 based on reports and statistics developed by class and subclass for
19 each county. The plan of assessment shall address issues outlined
20 in the progress report and shall propose actions to be taken for
21 the following year to assure uniform and proportionate assessments
22 that are within the statutory and administrative guidelines for the
23 level and quality of assessment.

24 Sec. 2. Section 77-5001, Revised Statutes Supplement,
25 2000, is amended to read:

26 77-5001. Sections 77-5001 to 77-5031 and section 8 of
27 this act shall be known and may be cited as the Tax Equalization
28 and Review Commission Act.

1 Sec. 3. Section 77-5003, Revised Statutes Supplement,
2 2000, is amended to read:

3 77-5003. (1) The Tax Equalization and Review Commission
4 is created. The Tax Commissioner has no supervision, authority, or
5 control over the actions or decisions of the commission relating to
6 its duties prescribed by law. The commission shall have three
7 commissioners, one from each congressional district, ~~who are~~ and
8 two at-large commissioners appointed by the Governor with the
9 approval of a majority of the members of the Legislature. The
10 Governor shall appoint the at-large commissioners as soon as
11 practicable after the effective date of this act. One of the
12 commissioners shall be designated by the Governor as chairperson.

13 (2) The term of the commissioner from district 1 expires
14 two years after the first appointment under this section, the term
15 of the commissioner from district 2 expires four years after the
16 first appointment under this section, and the term of the
17 commissioner from district 3 expires six years after the first
18 appointment under this section. The initial terms of the at-large
19 commissioners expire on January 1, 2007. After the initial terms
20 of the commissioners are completed, each term shall be for six
21 years. Upon the expiration of his or her term of office, a
22 commissioner shall continue to serve until his or her successor has
23 been appointed.

24 (3) A commissioner may be removed by the Governor for
25 misfeasance, malfeasance, or willful neglect of duty or other cause
26 after notice and a public hearing unless notice and hearing are
27 expressly waived in writing by the commissioner.

1 Sec. 4. Section 77-5005, Revised Statutes Supplement,
2 2000, is amended to read:

3 77-5005. (1) Within ten days after appointment, the
4 commissioners shall meet at their office in Lincoln, Nebraska, and
5 enter upon the duties of their office.

6 (2) A majority of the commission or, in cases when a
7 panel of three commissioners heard a case, a majority of the panel
8 shall at all times constitute a quorum to transact business, and
9 one vacancy shall not impair the right of the remaining
10 commissioners to exercise all the powers of the commission.

11 (3) Any investigation, inquiry, or hearing held or
12 undertaken by the commission may be held or undertaken by or before
13 ~~any one commissioner~~ a panel of three commissioners with the
14 approval of the commission.

15 (4) When holding hearings pursuant to sections 77-5016,
16 77-5024, and 77-5026, the commission may, after hearing the
17 evidence and argument on the record, recess to closed deliberations
18 for the limited purpose of deciding the matter before it
19 notwithstanding sections 84-1408 to 84-1414. After deliberating,
20 the commission shall issue its final decision, accompanied by
21 findings of fact and conclusions of law, in writing or on the
22 record.

23 (5) All investigations, inquiries, hearings, and
24 decisions of ~~a commissioner~~ a panel of commissioners and every
25 order made by a ~~commissioner~~ panel of commissioners ~~when approved~~
26 ~~and confirmed by a quorum of the commission, if so shown on its~~
27 ~~record of proceedings,~~ shall be deemed to be the order of the
28 commission. The full commission may grant a rehearing and

1 determine de novo any decisions of or orders made by a panel of
2 commissioners. The thirty-day filing period for appeals under
3 subsection (2) of section 77-5019 shall be tolled while a motion
4 for rehearing is pending.

5 Sec. 5. Section 77-5014, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 77-5014. In cases involving appeals of decisions by a
8 county board of equalization or the Property Tax Administrator, the
9 commission shall take evidence and otherwise conduct the appeal as
10 provided in sections 77-5015 to 77-5019 and section 8 of this act.

11 Sec. 6. Section 77-5015, Revised Statutes Supplement,
12 2000, is amended to read:

13 77-5015. Cases may be appealed to the commission within
14 thirty days after the final action of the county board of
15 equalization or Property Tax Administrator. Appeals regarding the
16 valuation or exemption of multiple parcels involving the same owner
17 and the same issues may be consolidated at the discretion of the
18 commission. Any multiple filing fees for consolidated appeals
19 shall be refunded by the commission if such fees were paid prior to
20 the consolidation of appeals by the commission. ~~In~~ Except as
21 provided in section 8 of this act, in any case appealed to the
22 commission all parties shall be afforded an opportunity for hearing
23 after reasonable notice. The notice shall state the time, place,
24 and issues involved, but if, by reason of the nature of the
25 proceeding, the issues cannot be fully stated in advance of the
26 hearing or if subsequent amendment of the issues is necessary, they
27 shall be fully stated as soon as practicable. Opportunity shall be
28 afforded all parties to present evidence and argument. The

1 commission shall prepare an official record, which includes
2 testimony and exhibits, in each case, but it shall not be necessary
3 to transcribe shorthand notes unless requested for purposes of
4 rehearing, in which event the transcript and record shall be
5 furnished by the commission upon request and tender of the cost of
6 preparation. Informal disposition may also be made of any case by
7 stipulation, agreed settlement, consent order, or default. The
8 commission shall adopt and promulgate rules and regulations for
9 notice and hearing in cases appealed.

10 Sec. 7. Section 77-5016, Revised Statutes Supplement,
11 2000, is amended to read:

12 77-5016. ~~All~~ Except as provided in section 8 of this
13 act, all cases appealed to the commission shall be granted an
14 informal hearing unless a formal hearing is granted as determined
15 by the commission according to its rules and regulations. In cases
16 appealed to the commission:

17 (1) The commission may admit and give probative effect to
18 evidence which possesses probative value commonly accepted by
19 reasonably prudent persons in the conduct of their affairs. It
20 shall give effect to the rules of privilege recognized by law. It
21 may exclude incompetent, irrelevant, immaterial, and unduly
22 repetitious evidence. Any party to an appeal filed under section
23 77-5007 may request a formal hearing by delivering a written
24 request to the commission not more than thirty days after the
25 appeal is filed. The request shall include the requesting party's
26 agreement to be liable for the payment of costs incurred and upon
27 any appeal or review, including the cost of court reporting
28 services which the requesting party shall procure for the hearing.

1 The commission shall be bound by the rules of evidence applicable
2 in district court in any formal hearing held by the commission.
3 All costs of a formal hearing shall be paid by the party or parties
4 against whom a final decision is rendered;

5 (2) The commission may administer oaths, issue subpoenas,
6 compel the attendance of witnesses and the production of any
7 papers, books, accounts, documents, statistical analysis, and
8 testimony, and cause the depositions of witnesses residing either
9 within or without the state to be taken in the manner prescribed by
10 law for taking depositions in civil actions in the district court;

11 (3) All evidence including records and documents in the
12 possession of the commission of which it desires to avail itself
13 shall be offered and made a part of the record in the case. No
14 other factual information or evidence shall be considered in the
15 determination of the case. Documentary evidence may be received in
16 the form of copies or excerpts or by incorporation by reference;

17 (4) Every party shall have the right of cross-examination
18 of witnesses who testify and shall have the right to submit
19 rebuttal evidence;

20 (5) The commission may take notice of judicially
21 cognizable facts and in addition may take notice of general,
22 technical, or scientific facts within its specialized knowledge or
23 statistical information regarding general levels of assessment
24 within a county or a class or subclass of property within a county
25 and measures of central tendency within such county or classes or
26 subclasses within such county which have been made known to the
27 commission. Parties shall be notified either before or during the
28 hearing or by reference in preliminary reports or otherwise of the

1 material so noticed. They shall be afforded an opportunity to
2 contest the facts so noticed. The commission may utilize its
3 experience, technical competence, and specialized knowledge in the
4 evaluation of the evidence presented to it;

5 (6) Any person testifying under oath at a hearing who
6 knowingly and intentionally makes a false statement to the
7 commission or its designee is guilty of perjury. For the purpose
8 of this section, perjury is a Class I misdemeanor; and

9 (7) The commission shall hear appeals and cross appeals
10 taken under section 77-5007 as in equity and without a jury and
11 determine de novo all questions raised before the county board of
12 equalization or the Property Tax Administrator which relate to the
13 liability of the property to assessment or the amount thereof. The
14 commission shall affirm the action taken by the board or Property
15 Tax Administrator unless evidence is adduced establishing that the
16 action of the board or the Property Tax Administrator was
17 unreasonable or arbitrary. Any decision rendered by the commission
18 shall be certified to the parties and, if applicable, to the county
19 treasurer and the official charged with the duty of preparing the
20 tax list. When such decision becomes final, any officials shall
21 correct their records accordingly.

22 Sec. 8. (1) At the request of one of the parties and the
23 agreement of all other parties, the commission may grant a motion
24 to decide any valuation or exemption appeal without a hearing,
25 based upon responses to questions and documents requested as
26 directed to each party by the commission and written argument and
27 rebuttal by each party. The commission shall prepare forms to use
28 to direct questions and requests for documents to the parties in

1 routine appeals of issues involving valuation or exemption. The
2 forms shall contain a series of standard questions and requests for
3 documents designed to enable the commission to decide the case.
4 The forms shall allow the documents to be attached to the forms.

5 (2) Parties wishing to have their appeals determined
6 without hearing shall make such request within thirty days after
7 the date the appeal was filed and send a copy of the request to the
8 opposing party. If no objection is raised within fifteen days, the
9 commission shall grant the request unless it determines that the
10 issues in the case are too complex to permit decision without a
11 hearing.

12 (3) Upon granting a request to decide an appeal without
13 hearing, the commission shall send the questions and requests for
14 documents to each party within thirty days after granting the
15 motion. Each party shall have thirty days after the date the
16 questions and requests for documents are sent to respond fully and
17 truthfully and to attach any requested documents. Responses shall
18 be signed and sent to the commission and a copy shall be sent to
19 the opposing party. Upon receipt of the response and documents,
20 the commission shall have sixty days to either send additional
21 questions or requests for documents to each party or issue a notice
22 that final arguments are due. If additional questions or requests
23 for documents are sent, each party shall have an additional thirty
24 days to respond in the same manner as previous questions.

25 (4) Upon notice from the commission, each party shall
26 prepare a final argument for consideration by the commission within
27 thirty days after the date the notice was sent. The final argument
28 shall be written, signed, and sent to the commission and a copy

1 shall be sent to the opposing party. Each party shall then have
2 fifteen days to file a written and signed rebuttal argument with
3 the commission. A copy of the rebuttal statement shall be sent to
4 the opposing party.

5 (5) Any person signing a response to any questions or
6 requests for documents under this section is attesting to the
7 truthfulness of the responses and the authenticity of the
8 documents. Any misstatement in such response or documents shall
9 constitute perjury. For the purpose of this section, perjury is a
10 Class I misdemeanor.

11 (6) All other procedures and penalties that are provided
12 in section 77-5016 shall apply to appeals decided under this
13 section. The commission shall decide appeals under this section as
14 it does all other appeals under subdivision (7) of section 77-5016
15 and issue a written decision to the parties in the same manner as
16 provided in sections 77-5017 and 77-5018.

17 Sec. 9. Original section 77-5014, Reissue Revised
18 Statutes of Nebraska, and sections 77-1311, 77-5001, 77-5003,
19 77-5005, 77-5015, and 77-5016, Revised Statutes Supplement, 2000,
20 are repealed.

21 Sec. 10. The following section is outright repealed:
22 Section 77-5012, Revised Statutes Supplement, 2000.

23 Sec. 11. Since an emergency exists, this act takes
24 effect when passed and approved according to law.